United Nations CAT/C/SR.1299

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
29 April 2015

Original: English

Committee against Torture
Fifty-fourth session

Summary record of the 1299th meeting
Held at the Palais Wilson, Geneva, on Friday, 24 April 2015, at 3 p.m.

Chairperson: Mr. Grossman

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Second periodic report of Romania (continued) (CAT/C/ROU/2; CAT/C/ROM/Q/2)

1. *At the invitation of the Chairperson, the delegation of Romania took places at the Committee table.*

2. **Ms. Turtoi** (Romania), replying to questions about arrangements for the national preventive mechanism (CAT/C/SR.1296), said that, pursuant to amendments introduced through Emergency Ordinance No. 48/2014, the Ombudsman had been designated as the national preventive mechanism. A deputy Ombudsman for torture prevention had been appointed in December 2014. It had the authority to conduct visits to places of detention, issue recommendations on their management, propose legislative amendments, provide input on existing laws, make policy suggestions, implement, monitor and assess relevant international technical and financial assistance programmes and conduct awareness-raising activities. As a distinct structure under the Ombudsman, the national preventive mechanism was independent, had a staff of 23 and had its own, sufficient budget. External experts were recruited to complement the expertise of permanent staff at both the central and territorial levels, on the recommendation of their professional associations. Representatives of seven non-governmental organizations (NGOs) in the field of human rights, with which the national preventive mechanism had signed cooperation agreements, were also involved in torture prevention efforts. In addition to civil society, the national preventive mechanism liaised with the Subcommittee on Prevention of Torture, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Council of Europe Commissioner for Human Rights.

3. A competition had taken place in early 2015 to recruit legal advisers, and another was planned to fill doctor, psychologist and social worker posts. The selection panel was appointed by the professional associations. The mechanism had prepared an annual visit plan of the 1,900 facilities. A meeting had been held on 31 March 2015 between the Ombudsman, the government authorities that ran places of detention, professional associations and the seven NGOs. The Ombudsman had ordered investigations into detention conditions in prisons and remand centres, the results of which would appear in a report to the Government and both chambers of parliament. The first pilot visit had been conducted on 20 April 2015 at Rahova Penitentiary by a team of 16 representatives of the national preventive mechanism, professional associations and NGOs, including at least one doctor. Further pilot visits would take place in other types of facilities covered under the mechanism's mandate, namely psychiatric hospitals, remand centres, migrant detention centres, drug addiction facilities, homes for older persons and institutions for juvenile offenders.

4. Visits could take place either as part of the annual visit plan or in response to a complaint. The management of places of detention were required to provide members of the national preventive mechanism with unfettered access to their facility and any necessary documentation prior to, during or after the visit. The visiting team was authorized to meet privately with any person deprived of their liberty as well as anyone likely to have relevant information, and the personnel of the place of detention were permitted to be involved only at the team's request and only to ensure their protection via video monitoring. No one could be held liable for providing the team with information. A report was to be drawn up within 30 days of each visit and, where relevant, could include recommendations for the improvement of treatment and detention conditions. The institution concerned was then required to submit its comments within 30 days. Both the visit report and the reply were public information. An emergency preliminary report containing recommendations for

immediate action was to be prepared where torture or cruel, inhuman or degrading treatment constituting an imminent threat to the life or health of the victim was observed, which the institution concerned was required to implement within three days. The Ombudsman was required to promptly notify the courts of any evidence of an offence.

5. A special report was prepared in 2008 on the rules regarding the execution of sentences and the placement of juvenile offenders in rehabilitation centres, in which the Ombudsman had made a number of recommendations, especially in terms of nutrition and education. As a result, the Ministry of Justice had set up an expert group to draft a new bill on the execution of sentences.

6. **Mr. Rotundu** (Romania) said that, as at 31 December 2014, more than 58,000 children had been covered by the child protection system, of whom over 21,500 were in residential centres, including more than 7,200 children with disabilities, and over 36,600 had been in foster care. Of the over 1,150 public institutions, only 83 were residential. Some 4,000 children, including 180 with disabilities, were in accredited private institutions. Overhauling the child protection system had been the Government's main priority since reforms of that sector had begun in the mid-1990s. Some 300 residential institutions, most of which had catered to children with disabilities, had been shut down and emphasis had been placed on family reintegration, placement in foster care and the establishment of homes providing a family setting. The latest government strategy had set 2020 as the deadline for the closure of residential institutions and the deinstitutionalization of children without parental care. The placement of children under the age of 3 in institutions was explicitly prohibited by law.

7. The National Agency for the Protection of Children's Rights and Adoption was the body responsible for ensuring compliance with to the relevant legislation. Between April and December 2014, the Agency had conducted 31 monitoring missions in public and private institutions as well as foster homes. Some 11 cases of physical abuse had been observed; the offending adult had been removed and the police and prosecution service had been notified in every case. The delegation could not provide any data disaggregated by ethnicity because the Agency did not collect such information in order to ensure that children were treated equally.

8. Turning to other concerns raised at the previous meeting, he said that, under the law, placement in a psychiatric institution was decided by either a judge or a psychiatrist, while decisions were appealable and subject to judicial oversight. A special senate investigative commission had been set up to look into allegations that places of detention and airports in Romania had been used by foreign intelligence services to hold or transport terrorism suspects; no evidence of such activities had been found. The Government acknowledged that the Roma had suffered discrimination in the past, but a broad-ranging set of administrative measures was in the course of preparation to correct the situation. For example, a dedicated government agency had been established that was headed by a member of the Roma community and the police academy had an annual minority quota that included the Roma.

9. **Mr. Trandafir** (Romania) said that the duration of detention for migrants in an irregular situation had been changed in 2011 in keeping with Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals. Pursuant to the amendments, third-country nationals could only be held if they could not be expelled within 24 hours and if they posed a flight risk, hampered the return or removal process or were under an expulsion order. They could not be held for more than six months, except at the request of the General Inspectorate for Immigration. Such detention was not considered as punishment for being in an irregular situation; rather, the measure was taken when the return process was under way and did not preclude the possibility of release. The appeal of return

decisions had a suspensive effect, except in certain situations such as when the person had been declared undesirable by a court.

10. Since August 2013, over 500 individuals had been rescued from the Black Sea. Some had applied for protection upon rescue and had therefore been placed in open centres for asylum seekers. Those who had not done so had been placed in closed centres, but had then been transferred to an open facility after applying for asylum.

11. **Ms. Cojanu** (Romania) said that the definition of torture contained in the new Criminal Code fully complied with the Convention as well as a number of other international instruments. The penalties remained the same, except that life imprisonment had been removed in cases where torture resulted in death because that sentence was reserved for intentional offences. The situations addressed in the Convention were covered in articles 281 and 440 of the new Criminal Code. In addition, committing an offence with cruelty or by subjecting the victim to degrading treatment had been added as a general aggravating circumstance. The Convention, like all international human rights instruments, prevailed over national laws wherever the two conflicted.

12. Under the law, pretrial detention could be applied only during the criminal prosecution phase, for logistical and cost considerations, and could not exceed 180 days. Nevertheless, the new Code of Criminal Procedure encouraged the use of alternatives to pretrial detention. The new Code, which incorporated Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings, stipulated that persons taken into custody must be immediately informed, in writing and in a language they understood, of the reason of their detention, their right to an attorney, their right to emergency medical attention, their right to lodge a complaint and the maximum duration of the custody. Detention could only be enforced after the person had been brought before a judge, in the presence of an attorney. Attorneys could communicate with their clients directly and confidentially. Detention orders were appealable.

13. A two-year project, funded by Norway, was under way to bring remand conditions into line with international instruments by providing additional human rights training to the police and by purchasing equipment to enhance existing infrastructure and recreational activities. In response to a recommendation made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Minister of Internal Affairs had approved a zero-tolerance stance towards any act of torture or inhuman or degrading treatment in May 2014.

14. Between 2009 and 2012, 126 requests for compensation had been made by victims of torture or their families, 54 of which had been granted. The maximum amount provided had been approximately 6,500 euros. Under the new Criminal Code, acts of torture committed during the communist regime could still be prosecuted if they were classified as crimes of genocide or murder. Data provided by the Institute for the Investigation of the Crimes of Communism in Romania and the National Institute for the Memory of the Romanian Exile showed, inter alia, that 13 such investigations were under way and 12 had been discontinued due to lack of evidence.

15. A new system to compile statistical data relevant to monitoring the implementation of the Convention at the national level, which included the introduction of new indicators, was currently being tested by the Ministry of Justice and information would be provided in due course. Since by definition cases of flagrante delicto were discovered during the commission of the act or immediately thereafter, the presence of a lawyer could not be ensured during body or vehicle searches conducted in the immediate aftermath of a person's arrest for an offence of that kind.

16. Pretrial detention in the State party was considered a measure of last resort and could be ordered in cases where, among other things, the individual was deemed to pose a

threat to public order, or was suspected of having committed bodily harm or murder, trafficking in persons, terrorism, rape, corruption, or any other offence that carried a sentence of not less than 5 years' imprisonment. It could only be ordered by a judge and was subject to a time limit and to periodical review. Detainees had the right to appeal and to compensation for unlawful detention.

17. In accordance with the Criminal Procedure Code, police misconduct was subject to criminal investigation by a prosecutor. Certain investigative activities could nevertheless be carried out by the criminal investigative bodies of the judicial police. In addition, certain special criminal investigative bodies were empowered to conduct investigations into certain offences committed by members of the military or the merchant marine. Under the Criminal Procedure Code, the relevant provision of which had been enacted in 2014, it was prohibited to use violence or coercion to obtain evidence, and confessions extracted under torture were not admitted in legal proceedings. Law No. 217 of 2003 covered various categories of domestic violence, and the victims of domestic violence were entitled to benefits such as housing allocations, counselling and legal advice.

18. The Superior Council of Magistracy was an independent authority, regulated by the Constitution, the members of which were accountable to judicial officials only. The procedure to revoke a member's position was governed by law and decisions of dismissal had to be proposed by the Chairperson, Vice-Chairperson, one third of the members, or at the request of a majority of the court or prosecutor's office represented by the member. Decisions of dismissal of the President or Vice-President had to be proposed by one third of the members. With regard to the removal from office of a representative of the Prosecutor's Office, decisions were made upon a majority vote by the prosecutors. Dismissals from office were executed within 15 days of securing the decision.

19. The State party would take into account the Committee's suggestion that it should recognize its competence, under article 22 of the Convention, to consider communications from individuals subject to its jurisdiction who claim to be victims of a violation of the Convention.

20. **Ms. Morar** (Romania) said that the budget allocation for prison infrastructure had increased by over 100 per cent compared with 2013. The refurbishment of prisons had been under way for three years and had already borne fruit. Prison capacity had been expanded through the construction of additional places in order to reduce overcrowding. Various prisons had been renovated to enhance living conditions; a juvenile section had been revamped, and a rehabilitation centre for women had been built, in accordance with standards. The action plan in that area focused on improving the administrative capacity of the National Administration of Penitentiaries for monitoring standards in prisons and observance of prisoners' rights, and increasing detainees' participation in productive activities. In addition, a budget had been earmarked for the pre-construction studies of two new penitentiary facilities.

21. As at April 2015, there was a total of over 29,000 persons detained, just over 1,500 of whom were women and approximately 320 minors. Separation between men and women, and minors from adults, was ensured in detention facilities and special programmes had been developed to meet the needs of women in detention. Under the new legislation the age of criminal responsibility was 14 years. A new educational centre was being opened for young persons in conflict with the law, which offered vocational training and other social reintegration activities, as well as a new detention centre with a focus on rehabilitation. Specialized staff, such as teachers, security personnel and psychologists, were employed in both centres and certain educational modules were mandatory with a view to ensuring the social reintegration of the young people concerned. Only two juvenile detention centres had been renovated and converted from their former status as penitentiary units, owing primarily to the fact that the current number of minors in conflict with the law could be

accommodated within those two. Lastly, the number of detainees for the period 2008–2013 had increased for various reasons, including the absence of any form of amnesty or collective pardons.

22. **Mr. Tugushi** (Country Rapporteur) asked whether visits without prior notification were conducted by the national preventive mechanism only within the framework of follow-up to complaints, and suggested that all visits to places of detention should be unannounced. He asked whether the budget for the Ombudsman, which constituted the national preventive mechanism, had increased since the previous year. He expressed deep concern at the very lengthy duration of pretrial detention in police facilities of suspects whose cases were under investigation, since the risk of ill-treatment of detainees in those circumstances was high. Pretrial detention could not be justified by the requirements of the investigative procedure or police administration, and must be stopped. He asked for data on prosecutions and disciplinary action taken against police officials for the ill-treatment of detainees. He also asked how many police officials had been prosecuted and penalized for acts of racism committed mainly against persons from the Roma community. The presence of special intervention unit officers in prisons for supervision purposes contravened standards concerning penitentiary facilities, as those units should be used only as a last resort and in exceptional circumstances. Further to reports of incidences of ill-treatment in those units, he asked what measures had been taken to end their inappropriate and extensive use.

23. He wondered whether the Government envisaged funding the NGOs which provided most of the compensation for victims of trafficking and establishing a shelter for adult victims in Bucharest. He asked what the results were of measures taken to prevent and combat trafficking in persons, whether the number had decreased and whether training was provided to public officials for the identification of victims of trafficking, which was currently performed primarily by NGOs. Further information would be appreciated on steps taken to improve reporting mechanisms, since there had been numerous complaints concerning the lack of an independent police complaints mechanism. The Ombudsman was not an adequate substitute for institutionally embedded complaints mechanisms.

24. Referrals to the Neuropsychiatric Centre for Recovery and Rehabilitation were issued by local administration and were not subject to judicial appeal since they were often omitted from patients' files. If that was the case, he would like to know whether there were plans to amend legislation ensuring safeguards for persons placed in that centre.

25. **Ms. Belmir** (Country Rapporteur) said that additional efforts were needed to raise awareness of the prohibition of torture, particularly during the early stages of detention. She would like further information concerning the delays in issuing court decisions and the shortage of judges, which resulted in the use of state magistrates in cases that should remain within the purview of the relevant court.

26. Despite action taken to reduce the abandonment and institutionalization of children, the Special Rapporteur on the sale of children, child prostitution and child pornography had reported that there were 5 million children without parental care in the State party, 2.2 million of whom were placed in institutions. She asked what measures were in place to provide care and reparation for child victims of trafficking, many of whom had been exposed to that danger following abandonment. Furthermore, she noted that persons in a vulnerable situation were entitled to legal aid and compensation under certain conditions, such holding Romanian nationality, residing legally in the country, conducting the legal proceedings in Romanian, and cooperating with the judicial authorities, and she doubted whether such as criteria covered all child victims of trafficking in the State party. She noted that proceedings related to crimes committed during the communist dictatorship were extremely protracted and victims were obliged to wait a long time to receive any form of reparation.

27. She expressed concern that children in conflict with the law could be heard in the absence of legal counsel. In addition, could the State party justify the requirement for a minor to produce a written statement in the absence of a lawyer prior to the interview, since the information gathered in the interview should form the basis of all statements? She would like further information regarding expropriations and evictions of members of the Roma community.

28. **Mr. Bruni** asked what the Government's official position was concerning the reports that had been released in the media and by the Council of Europe regarding the existence of several detention centres run by the Central Intelligence Agency in the State party and in Poland, known as "black sites".

29. **Mr. Gaye** said that there were certain fundamental safeguards that should be enjoyed by all persons deprived of their liberty. According to the report, defendants *in flagrante delicto* cases were denied the assistance of counsel. He wished to know whether such assistance was denied even when a case came to trial, so that the prosecution could basically determine the outcome of the proceedings.

30. **The Chairperson** emphasized the importance of ensuring that alleged offences were investigated by independent supervisory bodies. He asked how frequently complaints of ill-treatment against law enforcement officers or other public officials gave rise to counterclaims. He also wished to know whether the Convention was directly applicable in the domestic legal order, in other words whether victims of violations of the Convention could quote the relevant article before a judge and whether the judge could then base his or her decision on that complaint.

31. **Mr. Tugushi** said that the autopsy conducted on Gabriel Dumitrache had confirmed that he had been subjected to severe forms of ill-treatment. The Committee wished to be informed of the outcome of the legal proceedings currently being conducted against the police officers alleged to be responsible for the ill-treatment. He enquired about the availability of statistical data, disaggregated by ethnicity, concerning complaints of torture and ill-treatment, investigations and prosecutions, and criminal penalties or disciplinary measures imposed on law enforcement officers.

32. **Ms. Belmir** noted that pretrial detention centres were run by the Ministry of Internal Affairs, whereas they should, in her view, be run by the Ministry of Justice. She asked whether reliable action was taken to assess whether defendants were in full possession of their mental faculties before they were held responsible for criminal acts. She gathered that the medical staff responsible for conducting such examinations reported to the Ministry of Internal Affairs instead of the Ministry of Health.

33. **Ms. Morar** (Romania) said that since February 2014 all incidents in subordinated units of the Prison Inspection Directorate involving the use of means of restraint had been referred to the National Administration of Penitentiaries with the relevant documents and video images. The conclusions were transmitted to the prison units in order to remedy malfunctions and to promote best practices. Disciplinary action had been taken against staff who had acted illegally.

34. Prison intervention teams were familiar with the provisions of the Istanbul Protocol and trained to recognize signs of torture or ill-treatment. Prisoners underwent a confidential medical examination when they were admitted to prison and on a regular basis while serving their sentence. They were informed about available therapeutic programmes for drug users and programmes for the prevention of communicable diseases and sexually transmitted infections. Access to a doctor could not be restricted by prison staff and patients could also be treated in specialized units of the public health-care system.

35. Detainees suffering from psychiatric disorders were periodically examined by psychiatrists and the risk of suicide was monitored. They could be treated in public hospital units and they had access to the National Programme for Mental Health. Inmates who refused food were examined daily by the medical personal and emergency treatment was given to remedy metabolic deficiencies. Physicians who found that an inmate had been subjected to torture or ill-treatment were required to refer the matter to a Public Prosecutor. An inmate could also ask to be examined by a forensic physician or a doctor working outside the prison system. All findings were recorded in the inmate's medical file.

36. Since 2014 a total of 628 inmates had been referred by physicians for further examinations to units outside the penitentiary system. Only four such examinations had been requested by the inmates themselves. Act No. 254/2013 had removed the requirement for prison doctors to certify that inmates were capable of enduring solitary confinement.

37. The rise in the prison population had remained constant until the end of 2013, at which point the units run by the National Administration of Penitentiaries accommodated 33,434 inmates. By the end of 2014, that figure had declined to 30,156 inmates owing to the entry into force of new criminal legislation, which provided for alternative sanctions, custodial educational measures and a reduction in the length of sentences imposed for offences committed prior to 1 February 2014. There were 1,431 Roma inmates in the penitentiary system.

38. A national strategy to reduce violence in the penitentiary system had been launched in 2013. It included a programme for inmates who tended to engage in aggressive behaviour; a programme to reduce recidivism in cases of sexual abuse; a programme for inmates with a history of alcoholism, and a programme for inmates with mental disorders.

39. **Mr. Rotundu** (Romania) said that the Council of Europe report on secret detentions and illegal transfers of detainees had been adopted by the Committee on Legal Affairs and Human Rights in 2007. It was not an intergovernmental document. The Romanian authorities maintained their position that there was no proof of the existence of secret detention sites in the country. A Senate Commission had conducted investigations from 2005 to 2008 and had published its report in 2008.

40. The right of victims of the former regime to compensation had been recognized in March 1990. Difficulties had been encountered by the authorities, however, when they sought to prosecute persons who had aided and abetted the regime. Any individual whose rights had been violated by an administrative authority could bring a lawsuit against those responsible. Discrimination on various grounds, including membership of a minority group, was prosecutable under Romanian law. Unlawful expropriation did not exist for any population group.

41. **Ms. Turtoi** (Romania) said that the budget of the National Preventive Mechanism was roughly €4.5 million. The total budget of the Ombudsman was €1.3 million for 133 employees. The right of prison inmates to lodge complaints and to receive announced or unannounced visits from the Ombudsman was legally recognized.

42. **Ms. Morar** (Romania) said that while a large number of inmates filed complaints, many of those were unjustified. Complaints of torture or other forms of ill-treatment accounted for a very small proportion of the roughly 1,000 complaints filed annually. Nine cases of physical assault by prison staff had been recorded since 2014. A new institution involving judicial supervision of deprivation of liberty had been established under legislation enacted in 2013.

43. **Ms. Cojanu** (Romania) said that the right to a lawyer was guaranteed throughout criminal proceedings. The exception provided for in article 92 of the Code of Criminal Procedure referred only to the presence of counsel when special investigation or

surveillance techniques were being used or when a body or vehicle search was being conducted in cases of *flagrante delicto*.

44. The Statute of Judges and Prosecutors provided for disciplinary liability when judges failed to respect rules regarding the resolution of issues within a reasonable time. It was a matter of concern for both the Ministry of Justice and the Superior Council of Magistracy. An institutional dialogue was being conducted to safeguard the independence of the judiciary and to identify the best legislative solutions to the problem. The revocation of two judges in 2013 had not been based on a conflict of interest but on a request from the general assemblies that had elected them.

45. When a victim filed a complaint with investigative bodies, he or she could describe the act concerned as a violation of an article of the Convention. The ultimate responsibility for characterization of the complaint lay with the judiciary. Article 28 of the Criminal Code provided for absence of criminal responsibility where accused persons were not in full possession of their mental faculties.

46. According to statistics of the General Prosecutor's Office for 2014, 84 complaints of ill-treatment and 116 complaints of torture had been filed against law enforcement officers. Forty-four of the complaints of ill-treatment and 80 of the complaints of torture had been resolved. However, none of them had given rise to an indictment. Law enforcement officers could be prosecuted for racism but no data were yet available because the indicators were still being tested.

The meeting rose at 6 p.m.